IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

D.B. CIVIL SPECIAL APPEAL (W) NO.18/1996

Rajasthan State Industrial Development and Investment Corporation Limited, Jaipur
Vs.
M/s Asia Printpack Limited & Anr.

Date of Judgment :: 14 February, 2007

P R E S E N T

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri Ajeet Kumar Sharma for the appellant.
Shri S. Kasliwal for the respondents.

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BY THE COURT (PER HON'BLE THE CHIEF JUSTICE)(ORAL):

REPORTABLE

The dispute in this appeal relates compensation for the lands bearing khasra nos.99 and 101 measuring 24 bighas situate at Jhalana Chod within Sanganer tehsil of Jaipur district.

The land in question was acquired by the State Government for the benefit of the Rajasthan State Industrial Development and Investment Corporation Limited (RIICO) under the provisions of the Rajasthan Land Acquisition Act, 1953, then in vogue. Notification in terms of Section 4 the Act was issued on 18.7.1979. On 22.6.1982 a composite notification under Section 6 read with Section 17(4) of the Act was issued. Award was made on 2.1.1989. Compensation however was not paid to the respondents, owners of the land in question, as the RIICO did not make the money available to the Land Acquisition

Officer for payment to them. In the circumstances, the respondents filed writ petition being S.B. Civil Writ Petition no.4463/1991 seeking direction for payment of compensation. By the order impugned dated 24.8.1992, a learned Judge of this Court allowed the writ petition with a direction that the amount of Rs.6,30,000/- as compensation be paid by the RIICO as early as possible, in no case later than two months. The learned Judge directed that in case the amount is not paid within two months, the RIICO will have to pay penal interest at the rate of 18% per annum. The learned Judge clarified that the respondents would be free to move the reference court for any relief in respect of the amount determined by it. The appellant filed application for review of the judgment on the ground that the land in question already stood vested in the State Government by virtue of notification under Section 10(3) of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as 'the Urban Ceiling Act'), and there was no question of further acquisition of the same very land under the Land Acquisition Act and payment of compensation to the respondents thereunder. It was stated that in the review application that the facts regarding vesting of the land under the Urban Ceiling Act should have been brought to the notice of the Court by the writ petitioners. These facts however came to knowledge of the appellant only after disposal of the writ petition. The learned Judge rejected the review application by order dated 28.7.1993. The appellant has come in appeal challenging the correctness of the said two orders dated 24.8.1992 and 28.7.1993.

Shri Ajeet Kumar Sharma, learned counsel for the appellant submitted that the land stood vested in the State by virtue of notification under Section 10 (3) of the Urban Ceiling Act, and therefore the entire exercise under the Rajasthan Land Acquisition Act was misconceived and unwarranted.

The submission overlooks that the Urban Ceiling Act was repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as 'the Repeal Act') subject to savings clause as contained in Section 3 which we shall presently refer. It is relevant to mention here that the Repeal Act was made applicable at the first instance to the States of Haryana and Punjab and to all the Union Territories, and subject to its adoption by States by passing of resolution in that behalf under Article 252(2) of the Constitution of India it was to apply to other States. The legislature of the State of Rajasthan on 23.3.1999 passed resolution adopting the Repeal Act. The resolution was published in the Official Gazette Extraordinary on 11.10.1999 and took effect from the date of publication i.e.11.10.1999. It is not in dispute that the land in question was subject matter of proceeding under the Urban Ceiling Act. The question for consideration is whether by virtue of the orders passed and the notification issued therein read with the provisions of the Repeal Act, the respondents are entitled to compensation under the Land Acquisition Act. It would be appropriate to notice the relevant events for answering the question.

We have already referred to the dates of the relevant notifications under the Land Acquisition Act so far as the Urban Ceiling Act is concerned, pursuant to notification under Section 6 of the Act on 3.9.1976. The respondent filed statement of vacant lands along with application for exemption under Section 20. In course of time, on 6.2.1984 draft statement as provided in Section 8 of the Act was issued followed by the final statement as per Section 9 of the Act on 26.12.1985. Notification in terms of Section 10(3) was issued on 15.10.1986. Sub-section (3) of Section 10 provides that after the publication of notification under sub-section (1), the competent authority may, by notification published in the Official Gazette of the State concerned, declare that the excess vacant land referred to in the notification published under sub-section (1) shall with effect from such date as may be specified in the declaration be deemed to have been acquired by the State Government, and upon the publication of such declaration such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified. It is relevant to mention here that the said notification was published in the Official Gazette on 30.10.1986 and on 3.11.1988 possession was supposed to have been handed over to the Jaipur Development Authority (JDA).

It would appear that these events took place during pendency of the proceeding under the Rajasthan Land Acquisition Act. As seen above, the notification under Section 4 of the Rajasthan Land Acquisition Act had been issued on 18.7.1979 and on 22.6.1982 declaration in terms of Section 6 read with

notification under Section 17(4) of the said Act had been issued. The point for consideration is whether by reason of the notifications issued under the Urban Ceiling Act and the deemed acquisition and vesting of lands in question under that Act with effect from 1.9.1986, the respondents are entitled to compensation.

As mentioned above, the Urban Ceiling Act stood repealed by the Repeal Act, so far as the State of Rajasthan is concerned, with effect from 12.10.1999 and the question has therefore to be considered in the light of the provisions of the Repeal Act.

The Repeal Act, as stated above, contains savings clause in Section 3, and having regard to the controversy, it would be apposite to quote Section 3 so far as relevant as under :-

> "**3. Savings.**-(1) The repeal of the principal Act shall not affect -
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> (a) the vesting of any vacant land under sub-section (3) of Section 10, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;
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> (b) . . . . . .
>
> (c) . . . . . .
>
> (2) Where -
>
> (a) any land is deemed to have vested in the State Government under sub-section (3) of Section 10 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and
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> (b) any amount has been paid by the State Government with respect to such land,
>
> then, such land shall not restored unless the amount paid, if any, has been refunded to the State Government."

From a reading of the above provisions it would appear that the repeal of the Urban Ceiling Act was not to affect the vesting of any vacant land under Section 10(3) possession of which had been taken over by the State Government or any person duly authorised by it in that behalf and where the land is deemed to have been vested in the State Government under Section 10(3) but possession thereof has not been taken over by the State Government or any person authorised by the Government in that behalf, the person becomes entitled to restoration of the land on refund of the amount paid by the Government. It would thus appear that payment of the 'amount' was sine qua non of acquisition and vesting of the land under the Urban Ceiling Act.

It would not be out of place to mention here that Section 11 of the Urban Ceiling Act provides for manner of calculation and payment of the amount in lieu of acquisition of the land which is deemed to have been acquired by and vested in the State Government under Section 10(3) of the Act. It is not in dispute that notwithstanding the notification under Section 10(3) amounting to deemed acquisition and vesting of the land, calculation/determination of the amount in terms of Section 11 of the Act was not made and the amount was not paid to the respondent.

As observed above, determination and payment of the amount under Section 10 are integral part of the acquisition process and as no such determination had been made and amount paid to the respondent, it is difficult to accept the case of the appellant that the

acquisition/vesting of land attained finality by reason of notification under Section 10(3) of the Act - thereby making the proceedings under the Rajasthan Land Acquisition Act redundant. It is to be kept in mind that the possession was supposedly handed over to the JDA on 3.11.1988 but apparently this was a paper transaction. Prior to initiation of the proceeding under the Urban Ceiling Act, proceedings under the Rajasthan Land Acquisition Act had already been initiated with respect to the land in question for the benefit of RIICO i.e. the appellant. The amount not having been determined and paid under Section 11 of the Urban Ceiling Act, denial on the part of the RIICO to pay the compensation will amount to acquisition of land without compensation rendering the acquisition confiscatory. The proceeding having been initiated for the benefit of the appellant and the appellant having taken possession of the land in question, it cannot deny its liability to pay compensation to the respondent. The acquisition of land in question is a fait accompli and the only thing to be done is to pay compensation as assessed by the Collector under the Act subject to determination by the reference Court under Section 18 of the Land Acquisition Act.

Before we close the discussions, we may mention that the Rajasthan Land Acquisition Act came to be repealed with the enforcement of Act 68 of 1984 with effect from 24.9.1984. Section 11A of the Land Acquisition Act provides that the award under Section 11 shall be made within a period of two years from the date of publication of the declaration and if no award is made within that period, the entire proceedings for

the acquisition of the land shall lapse. By virtue of the proviso, where the declaration has been published prior to commencement of the Amendment Act i.e. Act 68 of 1984, the award has to be made within two years from such commencement.

In the instant case, the award under the Land Acquisition Act was made on 2.1.1989. Reckoned from the date of commencement of the amendment i.e.24.9.1984, the period of two years expired on 23.9.1986. The award made on 2.1.1989 would therefore have been inconsequential and the proceeding in the ordinary course would have lapsed. However in the State of Rajasthan, by State amendment Section 56 was inserted in the Land Acquisition Act with effect from 3.1.1987. Sub-section (4) of Section 56 provides that where the proceeding is pending on the date of commencement of the Land Acquisition Act in Rajasthan Amendment Act 1987 "the award shall be made within two years after such commencement". The award made on 2.1.1989 that is within the period of two years from the date of commencement of the Rajasthan Amendment Act would thus appear to be within time. No objection can therefore be taken to the validity of the award on the ground that it was not made within the period laid down in Section 11A of the Act. The award having duly been made by the Collector under the Act, the land having been acquired for the RIICO for its benefit, it has no option but to make available the necessary amount at the disposal of the State Government/Collector for payment to the respondent. The learned Judge in the circumstances therefore did not commit any error in allowing the writ petition and directing the appellant to pay the amount.

Counsel for the appellant submitted that in any case, the learned Single Judge should not have awarded interest at the rate of 18%. Counsel for the respondent, Shri Kasliwal, stated that the entire amount of Rs.6,30,000/- was paid within the period of two months as per the order of the learned Single Judge, and therefore the question of payment of interest on this amount does not arise, and therefore it is not necessary to deal with the submission of counsel for the appellant.

In the result, the appeal is dismissed but without any order as to costs.

[MOHAMMAD RAFIQ], J. [S.N. JHA], CJ.

Skant/-